

1 THE HONORABLE JAMES L. ROBART  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 LEONARD COULOMBE,  
10  
11 v.  
12  
13

Plaintiff,

TOTAL RENAL CARE HOLDINGS,  
INC., DAVITA INC.,

Defendants.

14 NO. CV06-504  
15

PLAINTIFF'S MOTION FOR  
VOLUNTARY DISMISSAL OF  
REQUEST FOR EMOTIONAL  
DISTRESS DAMAGES

**NOTE ON MOTION CALENDAR  
AUGUST 18, 2006**

16  
17 **I. RELIEF REQUESTED**

18 Plaintiff Leonard Coulombe requests that the Court enter an order which  
19 dismisses without prejudice his request for emotional distress damages referenced  
20 in paragraph 4.1 of the Complaint. Plaintiff's claims in the instant action are for  
21 monetary relief for defendant's failure to pay compensation from his employment  
22 with defendants in the form of stock options, salary and bonus. Plaintiff is not  
23 pursuing a claim for emotional distress damages.

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25 **II. PERTINENT FACTS**

26 At paragraph 4.1 of his Complaint, under the heading "Damages", plaintiff  
makes reference to emotional distress damages. In his prayer for relief, plaintiff

PLAINTIFF'S MOTION FOR VOLUNTARY  
DISMISSAL OF REQUEST FOR EMOTIONAL  
DISTRESS DAMAGES  
(CV06-504) - 1

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1 requests an award of his claimed damages. However, Mr. Coulombe is not seeking  
2 an award of emotional distress damages in this action and the Complaint should  
3 reflect this fact. Accordingly, he moves for voluntary dismissal of the request for  
4 emotional distress damages.

5 **III. APPLICABLE LAW**

6 Rule 41(a) permits voluntary dismissal of a claim for damages without  
7 prejudice after a responsive pleading has been filed. Defendants answered the  
8 plaintiff's Complaint. No counterclaim or cross-claim has been filed.

9 Since plaintiff is not pursuing a claim for emotional distress, he moves to  
10 dismiss the request for emotional distress damages to the extent such a request can  
11 be read on the face of the Complaint. He requests that the reference to emotional  
12 distress damages be deemed stricken from the Complaint.<sup>1</sup>

13 **IV. PROPOSED ORDER**

14 Based upon the above, it is ordered:

15 Plaintiff's request for emotional distress damages is dismissed without prejudice  
16 and the reference to emotional distress damages is stricken from the Complaint.

17 DATED this 28<sup>th</sup> of July 2006.

18 SHORT CRESSMAN & BURGESS PLLC

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25 Attorneys for Plaintiff

26 <sup>1</sup> Also, under Rule 12(f), the Court on its own initiative may strike any "immaterial" matter  
from any pleading.

## **CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 2006, I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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